92-1701

Supreme Court, U.S.
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No.

In The
Supreme Court of the United States
October Term, 1992

THE ALTON & SOUTHERN RAILWAY COMPANY,
Petitioner,

v.

CHARLES E. MILLER,
Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court of Illlinois
For The Fifth District

RESPONDENT'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

All parties to the proceeding in the Court of Appeals are identified in the caption. Pursuant to Supreme Court Rule 29.1, respondent states there are no parent or subsidiary corporations to be listed.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 2

ARGUMENT 3

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES:

Louisville & Nashville R. Co. v. Layton,
243 U.S. 617 3

Minneapolis & St. Louis R. Company v.
Gotschall, 244 U.S. 66 (1917) 4

Swinson v. Chicago, St. Paul, Minneapolis
& Omaha Ry. Co., 294 U.S. 530 (1935) 5

Coray v. Southern Pacific Co.,
355 U.S. 520 (1949) 6

Carter v. Atlanta & St. Andrews Bay Ry. Co.,
338 U.S. 430 (1949) 7

Plouffe v. Burlington Northern, Inc.,
730 P.2d 1148 (Mont. 1986) 8

McCalley v. Seaboard Coast Line R. Co.,
252 So.2d 275 (Fla. 1971) 8

Bocook v. Louisville & N. R. Co.,
67 F.Supp. 154 (E.D. y. 1946) 8

Page

Southern Pacific Company v. Mahl,
406 F.2d 1201 (5th Cir. 1969).....8

STATUTES:

45 U.S.C. sections 1-34 .....2, 3

45 U.S.C. section 51, et seq. 2

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Respondent, Charles E. Miller, respectfully requests that this Court deny the Alton & Southern Railway Company's Petition for Writ Certiorari, seeking review of the Fifth District Illinois Appellate Court's opinion in this case. The opinion of the Fifth District Illinois Appellate Court is reported at 233 Ill.App.3d 896, 599 N.E.2d 582, 174 Ill.Dec. 798 (1992).

STATEMENT OF THE CASE

Respondent's cause of action, brought pursuant to the Federal Safety Appliance Act, 45 U.S.C. Sections 1-34, and the Federal Employer's Liability Act, 45 U.S.C. Section 51, et seq., alleged that Respondent sustained injury to his back while attempting to uncouple a cut of cars (R.O.A., P. 3, L. 3-5). The specific allegation was that a defective pinlifter failed to operate normally and that, as a result, Respondent injured his back while pulling on the handle of the "hung up" pinlifter (R.O.A., P. 3, L. 5-7; L. 19-21; P. 4, L. 14-15). Eventually, Respondent affected the intended uncoupling (R.O.A., P. 6, L. 5-6). It is undisputed that Respondent did not go between railroad cars in order to uncouple them (R.O.A., P. 10, L. 10-13).

ARGUMENT

It is no defense to a Federal Safety Appliance Act claim that the injured Plaintiff was not required to go between the ends of railroad cars to affect an uncoupling

Respondent relies on Louisville & Nashville R. Co. v. Layton, 243 U.S. 617 (1917), for the proposition that liability under the Federal Safety Appliance Act, 45 U.S.C. Sections 1-34 (hereinafter "FSAA"), does not depend on a finding that an injured plaintiff went between railroad cars. In Layton, an engine pushing a stock car ahead of it failed in an attempt to couple with a chain of five cars. The engine struck the five cars with such force that they were driven two full car lengths into a motionless train of many cars. The plaintiff was a switchman aboard the motionless train when the chain of five cars violently impacted with it. As a result of the impact, the plaintiff sustained injury and brought suit therefor.

At trial, and subsequently on appeal, the defendant railroad contended that liability could not be predicated on a violation of the FSAA because said Act "is intended only for the benefit of employees injured when between cars for the purpose of coupling or uncoupling them." Id. at 457. In rejecting the defendant's contention, this Court reasoned as follows:

> The declared purpose of the Safety Appliance Act . . . is "to promote the safety of employees . . . upon railroads, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers ...." (citation omitted)

* * *

> While it is undoubtedly true that the immediate occasion for passing the laws requiring automatic couplers was the great number of deaths and injuries caused to employees who were obliged to go between cars to couple and uncouple them, yet these laws as written are by no means confined in their terms to the protection of employees only when so engaged. The language of the acts and the authorities we have cited make it entirely clear that the liability in damages to employees for failure to comply with the law springs from its being unlawful to use cars not equipped as required, -- not from the position the employee may be in, or the work which he may be doing at the moment when he is injured.
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> * * *
>
> [C]arriers are liable to employees in damages whenever the failure to obey the Safety Appliance Laws is the proximate cause of injury to them when engaged in the discharge of duty. Id. at 457 (emphasis added).

Layton is dispositive of Petitioner's appellate theory. Layton leaves no room for doubt that the position of the employee, and the work in which he is engaged at the moment of injury, are not factors pertinent to the FSAA liability inquiry.

Respondent also relies on Minneapolis & St. Louis R. Company v. Gotschall, 244 U.S. 66 (1917). In Gotschall, the plaintiff's decedent, a head brakeman, was proceeding along the tops of moving railroad cars when the train separated because a defective coupler opened. As a

result, the emergency brakes automatically locked, causing a sudden jerk which threw the plaintiff's decedent off the train and under the wheels. The plaintiff brought suit under the Federal Employer's Liability Act (FELA), and the case was tried to a jury. The jury returned a verdict for the plaintiff, and the Minnesota Supreme Court affirmed.

On appeal to this Court, the defendant contended that the jury had been improperly instructed that it could find negligence on the part of the railroad from the mere happening of the accident in question. This Court, noting "the positive duty imposed by the [safety appliance] statute upon the railroad to furnish safe appliances for the coupling of cars," Id. at 67, rejected the defendant's assertion of error and affirmed judgment for the plaintiff. Necessarily implicit in this analysis is the premise that the Safety Appliance Act supports absolute liability for injuries suffered by a plaintiff as a result of a defective coupler even when the plaintiff was not attempting to affect a coupling or uncoupling, and was not between cars at the moment of injury.

Respondent submits that if liability predicated on a violation of the Safety Appliance Act was proper under the facts in Gotschall – where the plaintiff's decedent was not even attempting to make a coupling or uncoupling – then a fortiori the Safety Appliance Act supports liability in the instant case, where Respondent was consciously endeavoring to affect an uncoupling with a defective pinlifter at the time of his injury. Moreover, whereas in Gotschall the causal connection between the defect and the injury was somewhat attenuated, in the case at bar the causal connection between defect and injury is direct and proximate.

Respondent further relies on Swinson v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 294 U.S. 530 (1935). In Swinson, the

plaintiff was injured when a grab iron on which he was positioned broke away from the plank to which it was attached. The plaintiff brought suit under the FSAA and the FELA. At trial, the defendant moved for a directed verdict in its favor on the ground that, since the purpose of Congress in requiring secure grab irons was to supply an appliance to grasp with the hands and not to provide a foot brace or support to secure leverage in releasing a hand brake, the railway could not be liable because the plaintiff had used the grab iron for a purpose for which it was not intended. The trial court granted the defendant a directed verdict and the Eighth Circuit Federal Court of Appeals affirmed.

This Court reversed. In reversing, this Court specifically rejected the defendant's contention that the FSAA only supports liability where the defective safety appliance was being used for its intended purpose at the moment of injury. The Court said:

> Although this section of the [Safety Appliance] Act was originally intended for "greater security to men in coupling and uncoupling cars," it was held in Davis v. Wolfe, 263 U.S. 239, 243, that . . . an employee "can recover if the failure to comply with the requirements of the act is a proximate cause of the accident, resulting in injury to him while in the discharge of his duty, although not engaged in an operation in which the safety appliances are specifically designed to furnish him protection." Id. at 531.

In the instant case, Respondent was using the defective pinlifter for its intended purpose of uncoupling cars. If the FSAA extends liability to situations where the injured plaintiff was using a safety appliance for other than its intended purpose (e.g., Swinson), then it

must surely extend to the paradigm situation presented here, where Respondent was injured while using a pinlifter specifically for its designated salutary purpose of allowing the uncoupling of cars without going between cars.

Respondent further cites this Court to Coray v. Southern Pacific Co., 335 U.S. 520 (1949). In Coray, the plaintiff's decedent was injured when defective brakes caused a freight train to suddenly stop, and a closely following motorcar, on which plaintiff's decedent was riding, crashed into it. The plaintiff sued for damages under the FSAA and the FELA. The trial court, holding that the FSAA's protection against defective brakes did not extend to employees following and crashing into a train which stopped suddenly because of defective brake appliances, directed a verdict in the defendant's favor. On appeal, the Utah Supreme Court affirmed.

This Court reversed. In reversing, this Court directly addressed the trial court's reasoning, stating:

> We do not view the [Safety Appliance] Act's purpose so narrowly. It commands railroads not to run trains with defective brakes. An abrupt or unexpected stop due to bad brakes might be equally dangerous to employees and others as a failure to stop a train because of bad brakes. And this Act, fairly interpreted, must be held to protect all who need protection from dangerous results due to maintenance or operation of congressionally prohibited defective appliances. Id. at 522 23 (emphasis added).

The logic of the above language from the Coray opinion applies with equal force to the facts presented in the case at bar. A defective

pinlifter constitutes a danger which is violative of the FSAA regardless whether the injured plaintiff went between cars to affect an uncoupling and was injured therein, or simply pulled on a "hung up" pinlifter and injured his back. Just as in Coray, the Act "must be held to protect all who need protection from dangerous results due to [the] . . . operation of a congressionally prohibited defective appliance[]." Id.

Finally, Respondent cites this Court to Carter v. Atlanta & St. Andrews Bay Ry. Co., 338 U.S. 430 (1949). In Carter, the plaintiff was injured while trying to stop a runaway car which had been set in motion by a failed attempt at coupling. The plaintiff alleged that the failure to couple was due to a defect in the coupling mechanism, and brought suit under the FSAA and the FELA. The trial court refused to submit the FSAA claim to the jury, and the jury returned a verdict in favor of the defendant on the plaintiff's FELA claim. The Fifth Circuit Federal Court of Appeals affirmed.

This Court reversed. In attempting to clarify the requirements for liability under the FSAA, the Court stated:

> . . . Congress has directed liability if the injury resulted "in whole or in part" from defendant's . . . violation of the FSAA.
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> * * *
>
> Certainly there was evidence upon which a jury could find a causal relation between the failure to couple [and] the action of petitioner in running and stopping the rolling car . . . thus causing injury. (citations omitted) It was error to take this phase of the case from the jury. Id. at 34 35.

Respondent suggests that if the causal connection between safety appliance defect and injury in Carter was not too attenuated or too far removed from the remedial intention of the FSAA, then it is clear beyond peradventure that, in the instant case, the nexus between the defective pinlifter and Respondent's injury falls within the remedial reach of the FSAA as well.

See, also, Southern Pac. Co. v. Mahl, 406 F.2d 1201 (5th Cir. 1969), Plouffe v. Burlington Northern, Inc., 730 P.2d 1148 (Mont. 1986), McCalley v. Seaboard Coast Line R. Co., 252 So.2d 275 (Fla. 1971), and Bocook v. Louisville & N. R. Co., 67 F.Supp. 154 (E.D. Ky. 1946).

Petitioner has suggested that United Transportation v. Lewis, 711 F.2d 233 (D.C. Cir. 1983), offers the proper interpretation of the FSAA. Lewis is not on point. The issue in Lewis was whether the FSAA merely describes requisite equipment, or whether it imposes "an independent prohibition against the act of going between the ends of the cars during uncoupling operations." Id. at 243. More specifically, the issue was whether the FSAA prohibits a railroad practice which requires employees to go between the ends of cars during coupling operations where the railroad has provided uncoupling equipment which conforms to the FSAA requirement that cars be capable of being uncoupled without the necessity of employees going between the ends of the cars. The Court said:

> Because we interpret the language and legislative history of the Act as speaking only to functional characteristics of safety appliances that must be installed on cars to be hauled in interstate commerce, we reject appellant's suggestion that the statute contains a separate prohibition of men going between cars. Id. at 248 49.

Notably, the Lewis court found the authorities cited by the appellant distinguishable for the following reason:

> Appellant's cases merely demonstrate that once the predicate of malfunctioning equipment has been established, it is irrelevant whether a workman places all or part of his body between the cars. Indeed, if he is injured because of a defective coupler, he may recover without even having gone between the cars at all. Southern Pacific Co. v. Mahl, 406 F.2d 1201 (5th Cir. 1969). But these cases cannot support the proposition that a violation of section 2 can be made out without proving that equipment has failed to perform as prescribed. Lewis, 711 F.2d at 249 (emphasis added).

(See, also, Lewis, 711 F.2d at 251 (footnote 39): "Congress imposed on railroads a duty not just to provide proper equipment, but also to guarantee its performance.")

Contrary to Petitioner's contention, Lewis fully supports Respondent's position in this appeal. In fact, the caption from Lewis, reproduced above, cites approvingly to Southern Pacific Co. v. Mahl, 406 F.2d 1201 (5th Cir. 1969), one of the cases relied on by Respondent and criticized by Petitioner. Respondent does not understand Petitioner's reliance on Lewis. Suffice it to say that Petitioner is wrong.

CONCLUSION

As demonstrated, Petitioner is misguided in its argument that prior case law supports its proposed construction of the Federal Safety Appliance Act. To the contrary, the overwhelming weight of authority is entirely opposed to Petitioner's position in this regard.

Further, Petitioner has failed to offer any justification for its prayer which effectively calls upon this Court to overrule a line of case authority almost 80 years old. In a case of statutory construction, such as this one, it would be improper for the Court to overrule its prior precedents when Congress could clearly have done so if it desired. Congress is presumed to know the law, and it has therefore implicitly endorsed the judicial gloss placed on the Federal Safety Appliance Act.

For all of the foregoing reasons, Respondent, Charles E. Miller, respectfully requests that this Honorable Court deny Petitioner, Alton & Southern Railway Company's Petition For Writ Of Certiorari.

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